Filed 8/17/04 Venus R. v. Superior Court CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

VENUS R., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B174041 (Super. Ct. No. BK03420)

PETITION for Extraordinary Writ. Emily Stevens, Judge. Writ denied.

Paul Davis for Petitioner.

No appearance for Respondent.

Office of the County Counsel, Larry Cory, Assistant County Counsel and William D. Thetford, Senior Deputy County Counsel for Real Party in Interest.

Venus R. challenges the denial of reunification services in this dependency proceeding involving her newborn son, Nathan R. We find no basis for extraordinary relief and deny the petition.

FACTUAL AND PROCEDURAL SUMMARY

Nathan R. was born in December 2003. He tested positive for cocaine and was suffering from drug withdrawal. Mother also had a positive cocaine toxicology screen. She refused to identify the father. The Department of Children and Family Services (DCFS) detained Nathan and then filed a petition alleging Nathan was a child described by Welfare and Institutions Code section 300, subdivision (b)[1] because of his mother's drug use. The petition also alleged that three of Nathan's siblings were current dependents due to mother's history of substance abuse and violent altercations and warned that DCFS might seek an order pursuant to section 361.5 that no reunification services be provided, which would result in immediate permanency planning for the child.

Mother did not appear at the detention hearing. Nathan was detained, reunification services were ordered, and a pretrial resolution conference was set. A jurisdiction/disposition report submitted by DCFS showed mother had a history of dependency proceedings in Contra Costa, Los Angeles, and Alameda counties and in Washington State involving six siblings or half-siblings of Nathan's. Mother's parental rights had been terminated as to H. R. and B. R. Another child had been adopted. Two others were receiving permanent placement services, and permanency planning services were scheduled for a sixth sibling, Victoria, for whom no reunification services had been ordered. DCFS reported that the primary problem for the family was mother's substance abuse, which was unresolved after many years of intervention by child protection agencies in the three counties. Mother had made several unsuccessful attempts at

[1] All statutory references are to the Welfare and Institutions Code.

substance abuse treatment. Nathan was placed in a foster home with an approved adoptive home study.

The juvenile court found the allegations of the amended petition true and set a hearing to determine whether reunification services should be offered. An addendum report regarding disposition was filed by DCFS on February 18, 2004. It stated that mother had been admitted to a mental health center on January 16, 2004 as a threat to herself and others. The social worker met with mother at the hospital on January 22, 2004, gave her notice of the February 18, 2004 hearing, and discussed the DCFS recommendation that no reunification services be ordered. Mother's physician reported that she had been diagnosed with a psychotic disorder, substance abuse induced psychosis, and postpartum psychosis. She had been placed on another psychiatric hold and her release date was contingent on her condition and the availability of a substance abuse program.

On February 12, 2004, mother contacted the social worker to say that she had been released and was living with her boyfriend. She told the worker she was supposed to return to an outpatient substance abuse program but could not remember the name of it. The worker reported that the foster parents for Nathan were attached to him and committed to making him a permanent member of their family. She recommended that mother not be given reunification services pursuant to section 361.5, subdivisions (b)(10), (11) and (13) because of mother's failure to reunify with the six siblings or half siblings, the permanent termination of mother's parental rights over some of the children, and mother's chronic history of substance abuse.

Mother appeared late for a hearing scheduled on March 11, 2004 having telephoned to report she was hospitalized. Mother had not submitted to drug testing the prior week because she forgot. Mother said "I'm always in and out of the hospital." She was uncertain as to whether her parental rights had been terminated to some of her other children. She testified that she had completed a "whole bunch" of drug treatment programs, the last of which was two or three years before as an outpatient. She admitted

that she had relapsed into crack use the day Nathan was born. Mother claimed she was drug free for three years before his birth.

Mother said she had missed her intake date for a new drug treatment program, and then missed it again, because she was not feeling well. A new intake date was set for the following Monday. Mother was living with her boyfriend of seven or eight months and they were considering marriage. She had been signed up for random drug testing less than one week before the hearing. Her most recent hospitalization, for psychiatric problems, came when she was hearing voices telling her to kill herself.

The court had denied reunification services to mother in a dependency matter involving her daughter Victoria approximately three years before. The court found no evidence that mother had participated in any treatment program between the denial of services for Victoria and Nathan's birth with a positive drug test. The only evidence was mother's admission of drug use on the day Nathan was born, which corroborated mother's failure to make a substantial or significant effort to stay off drugs. The court observed: "This mother has not had any of her children returned to her That means the children not even in our system, that includes the other children that we've mentioned today. I have children still in foster care. One went to a father, and the mother hasn't made any efforts that I can see toward those children." The court asked counsel for mother to provide proof mother successfully had completed any drug treatment program during that period. Counsel conceded that he had no independent evidence of mother's efforts at treatment.

The court questioned mother's testimony that she had been drug free before Nathan's birth: "Why would a mother who has been clean and who's resolved the problem use at the time that she knows she's going to give birth and endanger her child unless she has a drug problem and hasn't been able to kick it. You just don't take a hit and endanger your child unless you got a drug problem." In response, mother said: "Well, I do. I've had a drug problem for how many years?"

Counsel for Nathan joined with DCFS in recommending that no reunification services be ordered. The court found that mother had a continuing substance abuse

problem, and that she had not made a reasonable effort at treatment that led to the removal of Nathan's siblings or half-siblings from her care. Between Nathan's birth in December 2003 and the March 11, 2004 hearing, mother had not been in a drug program and had not submitted to random drug testing. Reunification services were denied under section 361.5, subdivision (b)(10). A permanent planning hearing was set under section 366.26.

DISCUSSION

Mother argues there was sufficient evidence to establish that she had made reasonable efforts to treat the problems that led to the removal of Nathan's sibling Victoria, within the meaning of section 361.5, subdivision (b)(10). She cites the fact that Victoria was born without drugs in her system and claims that the dependency proceeding involving Victoria was based on problems other than substance abuse. Mother's characterization of the dependency petition involving Victoria is misleading. The detention report for December 24, 2003 in Nathan's case quoted the allegations in the dependency petition for Victoria. That petition alleged that mother's failure to participate in counseling and drug testing had endangered Victoria's physical and emotional health and safety. It specifically alleged that mother had a history of substance abuse which "renders [Victoria's] mother incapable of providing the child with regular care and supervision. Further, the child's mother's use of marijuana and alcohol to excess endangers the child's physical and emotional health and creates a detrimental home environment."

Mother also relies on her testimony, unsupported by independent proof, that she had completed "maybe two or three" drug programs and that the last of these was two to three years before Nathan's birth. She also cites her testimony that she was drug free until relapsing on the day she went into labor with Nathan. The juvenile court did not credit this testimony. Mother characterizes her admission that she had relapsed into drug use as evidence that she is better equipped to conquer her drug problem since she was no longer in denial.

We review an order for no reunification services under section 361.5 for substantial evidence, "which requires us to determine whether there is reasonable, credible evidence of solid value such that a reasonable trier of fact could make the findings challenged (*In re Angelia P.* (1981) 28 Cal.3d 908, 924 [171 Cal.Rptr. 637, 623 P.2d 198]), . . ." (*In re Brian M.* (2000) 82 Cal.App.4th 1398, 1401.) The juvenile court was entitled to assess mother's credibility and we may not reweigh the evidence on appeal. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52.)

"Under subdivision (b)(10) of section 361.5, the juvenile court may deny reunification services in either of two different situations: where a sibling in another case was in a permanent plan as a result of the parents' failure to reunify, or where the record contained a permanent severance of parental rights as to a sibling and the parents had failed to make reasonable efforts to address their problems." (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 76.)

This case is similar to *In re Jasmine C.*, *supra*, 70 Cal.App.4th 71. In that case, the mother had an extensive history of drug abuse, she had failed to reunite with another child and had been denied reunification services as to a third child. The petition involving Jasmine and her two brothers was filed while mother was incarcerated after convictions on narcotics and carjacking charges. The Court of Appeal found substantial evidence to support the juvenile court's order denying reunification services, observing "by the evidence of her reoffending, the record establishes that appellant failed to make a reasonable effort to treat the problems that led to the removal of Jessica from her custody. Accordingly, the facts of this case fall within the ambit of section 361.5, subdivision (b)(10)." (*Id.* at p. 76.)

Here, mother and Nathan tested positive for drugs at his birth. She admitted she had a long term drug abuse problem. She was unable to provide corroboration for her claim that she had successfully completed any treatment program. Mother did not enroll in a drug treatment program until shortly before the hearing on reunification, missed two intake appointments, and had forgotten to call in to participate in random drug testing. We find substantial evidence to support the juvenile court's finding that mother had

failed to make "a reasonable effort to treat the problems that led to removal of the sibling of that child . . . ." (§ 361.5, subd. (b)(10).)

Mother also argues there was clear and convincing evidence that reunification would be in Nathan's best interest. She contends: "There was a bond between the mother and the minor from the mere fact that the mother carried this child for 9 months; and, one that should be protected by having the court order family reunification services."

Section 361.5, subdivision (c) provides that the court may not order reunification services for a parent described in section 361.5, subdivision (b)(10) unless the court finds, "by clear and convincing evidence, that reunification is in the best interest of the child." In *In re Levi U.* (2000) 78 Cal.App.4th 191, 200, the Court of Appeal found that section 361.5, subdivisions (b) and (c) "reflect a legislative determination that an attempt to facilitate reunification between a parent and child generally is not in the minor's best interests when the parent is shown to be a chronic abuser of drugs who has resisted prior treatment for drug abuse. (Cf. *In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474 [73 Cal.Rptr.2d 793].) In effect, the Legislature has recognized that, under those circumstances, 'it may be fruitless to provide reunification services . . . .' (*In re Rebecca H.* (1991) 227 Cal.App.3d 825, 837 [278 Cal.Rptr. 185].)" (See also *In re Brian M.* (2000) 82 Cal.App.4th 1398, 1403.)

Mother failed to carry her burden of showing by clear and convincing evidence that reunification with her would be in Nathan's best interest. She showed no history of visitation and no evidence of bonding with the child.

DISPOSITION

The petition for extraordinary relief is denied.

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EPSTEIN, Acting P.J.

We concur:

HASTINGS, J.

CURRY, J.